IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.07.2023

CORAM

THE HON'BLE **MR.JUSTICE C.SARAVANAN**

W.P.No.9546 of 2021
and
W.M.P.Nos.10144 & 10147 of 2021

Tvl.Nandhu Trading,
Represented by its Proprietor Karpagam. ... Petitioner

Vs.

The Assistant Commissioner (ST) (FAC),
North Circle – 1,
Tirupur. ... Respondent

Prayer: Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Certiorari to call for the records in Impugned Order made in TIN:33586337219/2015-2016 pertaining to Assessment Year 2015-2016 dated 20.08.2019 and the Impugned Consequential Distraint Notice in Form I made in TIN:33586337219/2015-2016 pertaining to Assessment Year 2015-2016 dated 06.08.2020 on the file of the Respondent and quash the same.

For Petitioner : Mr.V.Sunderaswaran

For Respondent : Mr.T.N.C.Kaushik
Additional Government Pleader

ORDER

Mr.T.N.C.Kaushik, learned Additional Government Pleader takes notice on behalf of the respondent.

2. This is the second round of litigation before this Court. Earlier the petitioner had challenged the Assessment Order dated 13.11.2017 in W.P.No.2632 of 2018. By an order dated 07.02.2018, W.P.No.2632 of 2018 was allowed by setting aside the Assessment Order dated 13.11.2017, subject to the petitioner depositing 15% of the disputed tax within a period of three (3) weeks from the aforesaid order.

3. Pursuant to the aforesaid order, the petitioner was issued with three notices dated 20.06.2018, followed by the second notice dated 19.09.2018 and by the third notice dated 28.09.2018.

4. A specific case of the petitioner is that pursuant to the Final Hearing Notice dated 28.09.2018, the petitioner has replied to the notices on 22.10.2018. However, without adverting to the reply filed by the petitioner which has been acknowledged by the officer, the Impugned Order has been passed on 20.08.2019. It is submitted that the Impugned Order is clearly in violation of principles of natural justice.

5. It is further submitted that if the respondent had taken note of the reply filed by the petitioner dated 22.10.2018 and had given an opportunity of personal hearing, then the petitioner would have explained the case clearly to the respondent. Hence, the learned counsel for the petitioner would submit that the impugned order is liable to be quashed.

6. Per contra, the learned Additional Government Pleader appearing on behalf of the respondent, on the other hand would submit that the Final Hearing Notice dated 28.09.2018 itself called upon the petitioner for a personal hearing within a period of fifteen (15) days from the aforesaid notice, on any working day along with the available records, failing which, the proposals contained in the notices will be confirmed.

7. It is submitted that although the petitioner may have filed a copy of the reply dated 22.10.2018, nothing precluded the petitioner from coming for personal hearing within a period of fifteen (15) days from 28.09.2018.

8. That apart, it is submitted that on 28.09.2018, a copy of the notice was also e-mailed to the petitioner. However, the petitioner neither choose to file any reply nor appear for the personal hearing.

9. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Additional Public Prosecutor for the respondent.

10. Although the petitioner was required to appear for personal hearing within a period of fifteen (15) days as per the Final Hearing Notice dated 28.09.2018, it appears that the petitioner was not called for a personal hearing. Even after the petitioner filed reply/representation on 22.10.2018, the Impugned Order also does not discuss about the same, therefore the petitioner has not responded to the notices issued.

11. Considering the above, the impugned order is liable to be quashed and the case is remanded back to the respondent to pass a fresh order on merits and in accordance with law within a period of forty five (45) days from the date of receipt of a copy of this order. The first hearing of the case shall be held before the respondent on 17.07.2023. The petitioner shall positively appear before the respondent and make his submission. The respondent shall thereafter pass an appropriate order on merits and in accordance with law within a period of thirty (30) days thereafter.

12. With the above observations and directions, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

04.07.2023

Index : Yes/No
Speaking/Non-speaking Order
Neutral Citation :Yes/No

rgm

Note: Issue Order Copy on 05.07.2023

C.SARAVANAN, J.

rgm

To

The Assistant Commissioner (ST) (FAC),
North Circle – 1,
Tirupur.

W.P.No.9546 of 2021
and
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